IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

**J U D G M E N T**

Ghanshyam Vs. Sardarmal&Anr.

S.B.CIVIL SECOND APPEAL No.56 of 2001

Date of judgment : 09 October,2006

**PRESENT**
**HON'BLE SHRI N P GUPTA,J.**

Mr. R.R.Nagori, for the appellants.
Mr. R.K.Thanvi, for the respondents.

**BY THE COURT:**
**REPORTABLE**

This appeal has been filed by the defendant, against the judgment and decree of the learned courts below, whereby the plaintiff respondent's suit for eviction has been decreed by both the learned courts below.

The facts of the case are, that the plaintiff filed a suit for eviction and arrears of rent, pleading interalia, that the plaintiffs had a joint property comprising of big Kotha, which was let out on 30.3.1984, to the defendant for storing his goods of Tent House etc., at a monthly rent of Rs. 200/-. It was stipulated that the defendant will not materially alter the premises. The measurement of the Kotha is given as 34 x 24 ft., and was one apartment, having main gate in the North, which door was measuring about 10 x 8 ft. having wooden shutters, on the side of this opening there was one window, measuring 3

x 4 ft. having Teak wood fittings. It is alleged that about a week ago, the plaintiff had materially altered this wall, by demolishing certain portion, and instead of window, a new big door has been opened, whereon iron shutter has been installed. Inside the Kotha a permanent partition wall of stone and cement has been constructed, and thereby a shop has been constructed, and thereby size of Kotha has been reduced, and a new shop has been constructed, having opening in the wall. Existing cement flooring has been demolished, and two separate rooms have been constructed. Lofts have been placed, and thus the entire Kotha has been substantially and materially altered, unauthorisedly. It was then alleged, that the shape of the Kotha has been brought to an end. Its utility has been substantially reduced, and the original accommodation has been divided into rooms. Thus, the act of the defendant was contended to be giving rise to the ground of eviction, as contemplated by Section 13(1)(b) and 13(1)(c) of the Rajasthan Premises (Control of Rent & Eviction) Act, hereafter referred to as the Act. It was then alleged, that Kotha was let out for Tent House business, which has been closed by the defendant, and instead, by altering the premises, he has opened a Tea Stall, and is doing photography business. Tea Stall is creating nuisance, and therefore, eviction was claimed on the ground of it falling under Section 13(1)(d) of the Act. Then, the arrears of rent for a period of three months was claimed. It was also alleged, that in the

Eastern wall there was a gate, which always remained closed, and towards further East, there is plaintiff's other premises, in the tenancy of Banshilal, the defendant has made alterations, and has opened this gate also anew, and is out and out to disturb the possession of other tenant Banshilal. Interalia with these averments the suit for eviction was filed, and injunction was also prayed, to restrain the defendants from making further alterations. The defendant contested the suit by filing written statement on 29.4.1992. Therein execution of rent note, and taking of the premises as mentioned in para-1 of the plaint was admitted. It was pleaded that at the time of letting out, the property was not measured, and it is wrong to contend, that it is one apartment. Existence of door in the North was admitted. It was pleaded that the door was also not measured at that time, and there was no window as alleged. Making of any alteration by the defendant was denied, erection of partition was also denied, and placing of lofts was also denied. It was maintained, that the premises are in the same shape and condition, in which they were, at the time of commencement of tenancy. Placing of shutter at the place of window was also denied. It was denied that the premises were taken on rent for Tent House. However, it was pleaded, that the defendant is carrying on business in the name of Laxmi Tent House, and he was earlier also doing photography business, which is in continuance, so also the Tea business was being carried on

since beginning. It was then pleaded, that the defendant is entitled to use the eastern gate, and is using it. It was alleged, that it was at the behest of the plaintiff, that in January, 1991, Banshilal had closed this door, and when the defendant asked to open the door, the plaintiff resented against it to the tenant, and the plaintiff assured the defendant to open the door, but it was not opened till the date, with the result, that the defendant is not able to use the entire property. It was pleaded, that the defendant had taken suit premises on rent for earning livelihood, but looking to the increase in the rental value, the plaintiff wanted to increase the rent, to which the defendant did not agree, and therefore, a false suit has been filed. In additional pleas maintaining substantially the pleadings taken in the earlier part of the written statement, it was pleaded that if the defendant had done any material alteration, the plaintiff would have objected to it at that time, and would have given notice to stop, but nothing was done. Likewise it was pleaded, that earlier the premises was not yielding any return, and with a view to have good return, it was the plaintiff, who made desired alteration in the premises, and then had let it out to the defendant. Interalia with these pleadings it was prayed, that the suit be dismissed.

On completing the trial, the learned trial court found the issues no. 2 and 3, relating to material

alteration, in favour of the plaintiff, and it was found, that after 30.3.1983, the date of commencement of tenancy, in December, 1991, the defendant has made alterations, as pleaded in para-2 of the plaint, and thus the two issues were decided in favour of the plaintiff. Then, deciding issue no. 4, relating to premises having been put to different use, it was found, that the defendant has left the tent business, and had opened a studio, and Tea Stall. Thus, it was found, that the premises are being used for different purpose, than the one, for which it was let out. Then, deciding issue no. 6, about the plaintiff's entitlement to injunction against any contemplated alteration in the eastern wall, has found, that since there is other tenant in the eastern side, it is necessary that the eastern gate should remain closed, and that it is not established from the defendant's evidence, that he was earlier using this gate, he has gate in the North, and according to the plaintiff, the defendant wants to install shutter, which cannot be allowed without permission of the plaintiff. Thus, this issue was also decided in favour of the plaintiff. Consequently the suit for eviction was decreed, and permanent injunction was granted, restraining the defendant from using eastern door, and from in any manner interfering with the other tenant, Banshilal's premises, and not to alter the wooden gate.

In appeal, it was considered, that the

plaintiff's case is, as recapitulated in para-6 of the judgment, being, that the premises was one apartment, having opening in the North, which gate was measuring 10 x 8 ft. having wooden door, and in this very wall there was a window measuring 3 x 4 ft., which has been removed by the defendant, and a big door has been opened, and shutter has been installed, and permanent partition wall has been erected, with stone and cement, and thus shop has been constructed, using the partition, and in the remaining part of the Kotha, the old cemented floor has been demolished, two separate rooms have been constructed, and lofts have been placed. Then, it was considered, that the defendant's case is, that he did not make any alteration, nor did he put any lofts, and that the premises are in the same condition, in which they were, at the time of commencement of the tenancy. After recapitulating this case of the parties, the evidence has been considered, and appreciating the defendant's own statement, it was found, that the story pleaded in the written statement is not correct, and alterations have been made subsequently, and thus, it was found, that even from this, it is established, that the Kotha has been subsequently altered, by erecting partition. Then, Commissioner's report was excluded, and then considering the plaintiff's evidence, it was found in para-13, that after commencement of tenancy, the window in the eastern wall has been removed, and door has been opened, on which shutter has been installed, inside the Kotha

permanent partition wall of cement and stone has been erected, and thereby it has given the shape of shop, reducing the length and width of the Kotha, a new shop has been constructed, providing opening in the North, and the old cement flooring of the remaining portion has been demolished, and by raising permanent partition wall, two separate rooms have been constructed, and doors have been placed. Then, it was found, that this does amount to material alteration, and the findings of the learned trial court were upheld. The finding of the learned trial court on issue no. 4, of course, was set aside. However, the decree for eviction was maintained.

Arguing the appeal it was contended by the learned counsel for the appellant, that the precise finding, that has been arrived at by the learned lower Appellate Court, are contained in para-13 of the judgment, which finding has been reproduced in memo of appeal, in para-6, at page-6. According to the learned counsel, the construction found to have been raised, does not amount to material alteration. Learned counsel in this regard placed reliance on a judgment of Hon'ble the Supreme Court, in Om Prakash Vs. Amar Singh, reported in 1987(1) All India Rent Control Journal 629 = AIR 1987 S.C. 617, to contend, that material alteration means, there should be a substantial change in the character, form and structure of the building, without destroying its identity. Then, referring to the facts of

that case, it was contended, that by raising of a partition wall in the hall, converting the same into two rooms, which partition wall was made without digging foundation of the wall in the room, and it did not touch the ceiling, and being removable any time, was held to be not amounting to material alteration. Then, reliance was also placed on the judgment of Allahabad High Court, in S.B. Mathur Vs. K.P. Gupta, reported in 1961 A.L.J.-137, wherein the learned Single Judge of Allahabad High Court held, that where the constructions had not affected the form or structure of the building in any way, and they were such which could not be prevented by an injunction, nor could any damages be claimed on their erection, such construction does not amount to material alteration. It was contended, that this judgment has been approved by Hon'ble the Supreme Court in Om Prakash's case. Reliance was then placed on another Division Bench judgment of Allahabad High Court, in Dr. Jai Gopal Gupta Vs. Bodh Mal, reported in 1969 A.L.J.-477, wherein it was held, that whether constructions made, amount to material alterations, is finding of law. In that case, kitchen and bathroom were constructed in open courtyard, which were having no foundation, they were made of bricks, were plastered with cement. Essentially they were of temporary character, could be demolished any time, without causing any damage to the accommodation, and the roof of one of them was supported by the side of the bed of the tenant, which was held to be not amounting to material

alteration. Then, reliance was placed on judgment of this Court, in Khinvaram Vs. Lakhi Prasad, reported in 1964 RLW 213, wherein it was held, that alteration should be of structural nature, and not merely of decorative nature. Fixing a door to a room, or to a garage, by a tenant was said to be not amounting to material alteration. Likewise covering and closing of an open Verandah, converting into a closed room, by fixing doors on the open portion, were held to be not amounting to material alteration. Then, another judgment of this Court, in Deep Chand Vs. Abdul Hussain, reported in 1986(2) WLN-68 was relied upon, where a brick Pardi wall was removed, to open gate, was held to be not amounting to material alteration. Reliance was then placed on the judgment of this Court, in Smt. Supyar Bai Vs. Smt. Gordhan Bai, reported in 1992(1) WLC (Raj.)-590, wherein it was held, that the words "materially altered" means a substantial change in character, form and structure of building, without destroying its identity. It means, that nature and character of change, or alteration of building, must be of important nature. In that case the tenant had raised height of walls of the roof, by putting up bricks wall, and putting a door in front, whereby converted the roof into rooms, and door was put, and that room was being used for keeping hens. It was considered, that there was no evidence of any foundation being dug, and it does not amount to change in the form or structure of the premises, construction of roof was of wooden planks, and structure

was of temporary nature, and easily removable, without causing damage to premises. Thus, it was held to be not amounting to material alteration. Then, an unreported judgment of this Court, in S.B. Civil Second Appeal No. 23/1989 decided on 30.5.2001, L.Rs. of Bhikam Chand Vs. Mohan Singh, was relied upon, wherein the defendant had opened a new door in the premises, in the manner, so that he can enter from one premises to another premises, and underground water tank was constructed, and it was found, referring to judgments in Om Prakash's case, and Supyar Bai's case, that it does not amount to material alteration.

On the other hand, learned counsel for the respondent supported the impugned judgments, by contending, that the argument of the learned counsel for the appellant proceeds on the basic assumption, that the construction raised is of temporary nature, as it is not with any foundation, and that the opening of door for convenient use of the premises does not amount to material alteration, while this has never been the case of the appellant, before both the learned courts below, inasmuch as, as noticed by the learned lower Appellate Court, in para-6 and 7 of the judgment, that the case of the defendant was, that he has not made any alteration after commencement of the tenancy, rather it was the plaintiff himself, who had made the alterations, for convenient use of the premises, before letting out the premises, and then, after appreciating

evidence of the defendant, in conjunction with the evidence of the plaintiff, it has been found, as a fact, that the stand taken by the defendant is palpably false, and that he has made construction. In that background, according to the learned counsel, it was required to be considered, that the positive case of the plaintiff was, that the defendant had raised construction of permanent nature (स्थायी दीवार), and it is nowhere the case of the defendant, at any point of time, that the construction is not of permanent nature, or is of temporary nature. In that view of the matter, there is no error in the finding of the learned courts below. It was stressed, that by the impugned construction, the form, and structure of the building has been materially, rather altogether, changed, inasmuch as one united Kotha, measuring 34 x 24 ft. has been altered into two shops; one is being run by the defendant as a photography shop, and the other as a Tea Stall, and then he claims to be running the tent business as well. This clearly amounts to material alteration, and no interference is required to be made. Learned counsel relied upon the judgment of this Court, in Badri Narain Tak Vs. M/s. Shyam Narain, reported in 1982 RLW-526, where the defendant had converted a shop into two parts, by constructing a brick wall, was held to be amounting to material alteration, as in that case it was found, that it was not in dispute, that Pucca wall of brick was constructed in shop, and the shop was divided into two shops, and the defendant wanted to use one as a Tea Stall,

and other one for selling liquor, and it was found, that the wall was a Pucca brick wall, and constructed for converting the shop into two shops, without permission of the landlord, it was held to be material alteration. Then, reliance was also placed on another judgment of this Court, in Prabhu Lal Vs. Kalu Ram, reported in 1986(1) WLN-289, where, closing of verandah on both the sides by Pucca walls was held to be amounting to material alteration. In that case, on either side of Verandah wall of bricks was constructed, which was not found to be anything like fencing, or some other temporary structure, and was held to be amounting to material alteration. Learned counsel then relied on yet another judgment of this Court, in Jaswant Mal Vs. Kailash Narayan, reported in 2002 AIHC-1368. In this case it was held, that Section 13(1)(e) clearly refers to such construction, as in the opinion of the Court, has materially altered the premises, and do not make any distinction between the permanent and temporary nature of the construction, as, even the temporary structure may amount to material alteration. In that case, in front of the house, so given to the original tenant, there were some other houses, belonging to the original plaintiff, and there was some vacant land, being used for ingress and egress, and the defendant, without permission, after putting stone, and doing some masonry work, got constructed a Chappar. It was held, that that amounted to material alteration. Reliance was then placed on yet another

judgment of this Court, in Bhagirath Mal Vs. Yuvrani Sahiba, reported in 2005 Civil Judgments (Rent Control)-93, wherein it was held, that opening of two doors of 6 x 3 ½ ft, and conversion of Varandah in a room, and affixing the tin shed, in front of that, clearly amount to material alteration, which has substantially changed the structure of the premises. Reliance was then also placed on the judgment of Hon'ble the Supreme Court, in Sarjas Rai Vs. Bakshi Inderjit Singh, reported in 2005 Civil Judgments (Rent Control)-24. In that case the floor of the shop was sought to be changed, and in that process, the level of the floor has been brought down one foot below the road level. Then, certain alterations were made in the structure, by removing pillars, with a view to give a wider frontage to suit the convenience of the appellant. It was found to be material alteration, and decree of eviction was passed. On the strength of these judgments, interalia, it was contended, that the impugned decrees do not require any interference, more particularly when, as contended above, it was not the case of the defendant, that the constructions are not of permanent nature, nor has it ever been the case of the defendant, that the alleged constructions do not materially alter the premises.

I have considered the submissions, have gone through the entire record, so also various judgments cited by both the counsel for the parties.

There is no dispute on the proposition, that raising of particular construction may be a question of fact, and such construction to be amounting to material alteration would be question of law, and the construction found to have been raised, should, in the opinion of the Court, have materially altered the premises, in order to make out a ground of eviction, in favour of the plaintiff. The case in hand is required to be considered, keeping in view, this basic aspect, and also seeking guidance from various judgments cited at the Bar, to come at any conclusion, either ways, as to whether the construction amounts to material alteration, or not?

Coming to the factual aspect, of raising construction, significantly, as noticed by the learned lower Appellate Court, that the plaintiff's case clearly was, about the defendant having raised the construction, as alleged in the plaint, without permission of the landlord, and thereby having materially altered the premises, and the construction was pleaded to be of permanent nature; as against which, the defendant's case was, only about having not raised any construction, whatever, and that the construction, as alleged, had already been raised by the landlord himself, before commencement of the tenancy, for convenient use by the defendant. Thus, the only controversy on the factual aspect was, as to whether the constructions

have been raised by the defendant, or were raised by the plaintiff, before commencement of the tenancy. The details of construction, nature of construction, and obviously the construction being of permanent nature, were never joined controversy by the defendant. Of course, the fact remains, that even thereafter it has to be, in the opinion of the Court, that the construction amounts to material alteration.

On factual aspect, it has been found by the learned lower Appellate Court, for cogent reasons, and after appreciating the evidence, that the stand of the defendant, about the construction having been made before commencement of the tenancy, and by the plaintiff himself, for the convenient use of the premises by the defendant, cannot be believed, and thus, this being pure finding of fact, having not been shown to be vitiated on any of the grounds available under Section 100 C.P.C., I have to proceed with the assumption, that the impugned constructions have been raised by the defendant, after commencement of the tenancy, and without the permission of the landlord.

Thus, I am to examine the question, as to whether, the construction, as found by the learned court below, as a fact, to have been raised, amounts to material alteration, or not? And for that purpose, I am to seek guidance from

various judgments cited at the Bar also. The construction found to have been raised, has rightly been quoted by the learned counsel for the appellant, in para-6 of the memo of appeal, as under:-

> ".....प्रतिवादी ने परिसर किराया पर लेने के बाद उसकी उतरी दीवार की बारी हटा कर दरवाजा निकाल लिया व उसमें शटर लगवा लिया और कोठे के अन्दर पत्थर व सीमेंट की स्थायी पार्टीसन वाल बना कर उसको दुकान की शक्ल दे दी और कोठे की लंबाई चौड़ाई को कम करते हुए कोठे में नई दुकान बना ली और उसका निकाल उतर की तरफगुजर की ओर खोल कर कोठे के बाकी हिस्से में सीमेंट की पुरानी बनी सीमेंट को तोड़ कर स्थायी पार्टीसन वाल व दो अलग अलग कमरानुमा हिस्से बना लिये व नई टांडों का भी निर्माण किया।....."

(*Emphasis Supplied*)

From the above, it is clear, that the defendant has removed the window in the northern wall, and instead has opened a gate, installed shutter thereon, and inside the Kotha, has raised a permanent stone and cement wall, and thereby, has given it shape of the shop, then reducing the size of the Kotha, has constructed a new shop, keeping opening towards North, and by demolishing the cement floor of remaining Kotha, by raising permanent partition wall, two separate room type apartments have been constructed, and has placed lofts.

Taking up the judgments cited by the learned counsel for the appellant, once again, in S.B. Mathur's case, as noticed above, the tenant constructed brick wall,

3” thick, and 2'.9” high, adjacent to Jangla, and another wall of 3” thick, and 7'2” wide was constructed, thereby dividing Verandah into two portions, the wall was not found to be going upto the ceiling, rather some place was left between the top of the partition wall, and the ceiling, in the shade; on the third floor a brick Jali was constructed in the northern wall of the shed, as alleged by the plaintiff, and in those facts, it was found, after appreciating legal position, that looking to the nature of the construction, it was found, that upper portion of the Jangla has been left in the form of a window, or a sky light, partition wall has been erected, which does not go upto the ceiling, and in the opinion of the Court, the landlord could not have objected, if these very things had been done with the help of wooden planks, or with a piece of canvas, fitted in frames. Therefore, it could not matter, any difference, if bricks have been used, instead, still there is only the space between the pillars, that has been filled with brick jali, which can also be removed, whenever wanted, leaving the shed in its original condition. Significantly it was then found, that bricks are easily removable, as wooden planks and canvass, and if they are removed, the original structure would be left, as it was. Thus, in my view, in substance, it was found, that whatever was done, was purely of temporary nature. Then, in Dr. Jai Gopal's case also, the tenant had added kitchen and bath room, which appeared to be necessary, for the proper

use, they were found to be having no foundation, that they were built by Pucca bricks, and they were plastered with cement, they were found to be essentially of temporary character, capable of being demolished at any time, without causing damage to the accommodation. It was also found, that “their temporary character is also evinced by the tenant's use of a side of a bed as a support for the roof of one of them”. Thus it was found, that they do not amount to material alteration. Again the additions were found, essentially to be of temporary nature. Coming to Khinvaram's case, therein again, the tenant had raised the height of tin shed, and had closed Chabutra, by fixing doors in a wooden frame, and it was found, that the question, whether the material alteration has been made, depends upon the nature of the premises, and nature, extent, and effect of the constructions, made therein. It was held, that what was formally a Chabutra with a tin shed over it, is converted into a closed room, by construction of Pucca masonary wall upon the floor of the Chabutra, converting the whole of the open Chabutra into a closed shop. Then, it was found, that the tenant formerly had a betel shop at the Chabutra, while by change, it was divided into two portions, being used, one for betel shop, and the other for selling tea. This was found to be certainly amounting to material alteration, and the eviction decree was upheld. In the present case also, it is clear, that the defendant is using the apartments, one for photography

business, and the other for Tea Stall, and as the defendant claims, that he is also carrying on tent business, thus obviously, by making alterations the premises have been divided into two different portions, and therein different business are being carried on. Thus, Khinvaram's judgment, rather fully negatives the appellant's contention, and supports the plaintiff’s case.

In Deep Chand's case again, a brick partition wall was removed to open a gate towards the Chowk, which was found to be not amounting to material alteration. In my view, this judgment is a judgment on particular facts of the case, inasmuch as, in the back side of the shop a door was opened to approach the Chowk. It was also found, that at that place a gate was in existence prior to letting out of the premises, and that gate was closed by a Pardi wall, which Pardi wall has been removed to restore the gate which was earlier in existence. The facts of the present case are substantially different, inasmuch as, opening a gate in a Pardi wall cannot be allowed to mean, to authorise tenant, to make gate anywhere in the premises, including the one done in the present case, by removing window, and on the big gate placing iron shutter, and converting it into a independent shop. Thus, the judgment in Deep Chand's case is clearly distinguishable on facts. Then, coming to Om Prakash's case, of course, in that case, a partition wall of 6ft. height, was constructed in a hall, converting the

same into two rooms, however, it was found, that the partition wall was made without digging foundation of the floor of the room, and it did not touch the ceiling. On these facts, it was considered, that construction of Chabutra, Almirah, opening a window, or closing a verandah by temporary structure, or replacing of a damaged roof which may be leaking, or placing partition in a room, or making similar minor alterations, for the convenient use of the accommodation, do not materially alter the building, as inspite of such constructions, the front and structure of the building, may remain unaffected. Then it was found, that the essential element is, as to whether the constructions are substantial in nature, and they alter the form or front and structure of the accommodation. Then, it was held, that it is not possible to give exhaustive list of the constructions, which do not constitute material alteration. Then, in the facts of that case it was found, that the construction was found by the learned trial court to be temporary in nature, which finding was not challenged and in that process it was considered, that partition wall was made without digging foundation, and it does not touch the ceiling, and was a temporary wall of 6 ft. height. In my view, this judgment is of no assistance to the appellant, for the simple reason, that it did not lay down as a rule of thumb, that wherever any construction is raised without digging foundation, it would always be temporary. Absence of foundation was also considered as one

of the circumstance, to find the construction to be temporary. But then, it was not laid as a rule, that in every case, where it is not pleaded or proved, that the foundation was dug, all such construction would be temporary. Requirement of foundation may depend on varying circumstances. That apart, in the present case, as noticed above, the plaintiff had clearly pleaded the construction to be of a permanent nature, which averment was not controverted, and which has been found by the learned courts below, as a fact, that the construction is of permanent nature. Whether particular construction is permanent, or temporary, cannot be said to be open to consideration in second appeal. Apart from the fact, that within the meaning of this judgment also, the form and front of premises has been changed, inasmuch as, the Northern side of the premises constitute front of premises, whereon one big door existed, and on the side a small window of 3x4 ft. existed, and instead of that window, big door has been opened, an iron shutter has been placed, and by raising construction inside, that this has been converted into an independent shop. Thus, this judgment not only does not help the appellant, rather it substantially goes against the appellant.

In Supyar Bai's case again, on facts, it was found, that in that case there was no pleading regarding change in the form or structure of tenanted premises, it

was found, that the construction cannot be said to be of permanent nature. Of course, in that case also it was noticed, that there was no pleading or evidence, that any foundation has been dug for raising the wall. In my humble view, that judgment is not of any assistance to the appellant, as in that case the construction was raised on the upper storey. Obviously if the height of the existing wall is raised, it is required to be grasped, that such raising of the height does not require any foundation to be dug. Thus this judgment also does not help the appellant.

Then, I take up the last case, being that in L.Rs. of Bal Kishan. In that case also the alteration complained was of opening door between two rooms, which obviously does not amount to material alteration. This judgment cannot be used to defend opening of gate, to give part of the Kotha, the shape of new shop.

Thus the judgments cited by the learned counsel for the appellant, as discussed above, do not help him, or rather go against him. As against which; the judgment cited by the learned counsel for the respondent, do help the respondent's case, on all the fours.

Over and above all this, in view of the principles propounded in the judgments cited at the Bar, it is clear, that individual act of alteration, like making an opening,

or erecting a wall, or placing shed, or the like, is not required to be considered in isolation, on the basis of individual judgments, with respect to individual act, but the acts complained of, are to be comprehended, as a whole, inasmuch as, simply because in one judgment opening of a door is not found to be amounting to material alteration, while in other judgments absence of digging of foundation has been considered as a circumstance to hold construction to be temporary, or in one judgment, construction of a small partition wall has not been held to be amounting to material alteration, or the like, cannot be allowed to make use to defend the cumulative act of opening the door, and construction of shop. The attitude of peeling a cabbage, and in that process, peeling away the entire cabbage cannot be said to be the permissible approach of law. An over all view of the matter is required to be taken to find, as to whether, in the totality of circumstances, the construction complained of, constitutes material alteration, of course, on the parameters, and by seeking guidance from various case laws.

If considered on these parameters; in my view, in the present case, the construction, as found to have been raised, having been found to be of permanent nature, is a material alteration, in the form and structure of the building, including its front, does very much amount to material alteration.

Thus, I do not find any error in the findings of the learned courts below. The appeal, therefore, does not involve any substantial question of law. The same is, therefore, dismissed summarily.

However, at the request of the learned counsel for the appellant, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

( N P GUPTA ),J.

/Sushil/